



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 470

**Assembly Substitute
Amendment 1**

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APPOINTMENT WHEN MUNICIPAL JUDGE IS TEMPORARILY ABSENT, SICK OR DISABLED

Current Law

Under current law, if a municipal judge is to be temporarily absent or is sick or disabled, the judge may transfer the case to circuit court or, with the approval of the chief judge of the judicial administrative district, may designate another municipal judge to perform his or her duties for a period not to exceed 30 days. [s. 800.06 (1), Stats.] If the municipal judge is from the first judicial administrative district (Milwaukee County) the judge may designate another municipal judge from any municipality within the state. [s. 800.06 (1) (a), Stats.] If the municipal judge is from a judicial administrative district other than the first district, the judge may only designate another municipal judge from the same judicial administrative district. [s. 800.06 (1) (b), Stats.]

The Substitute Amendment

The substitute amendment allows the temporarily absent, sick or disabled municipal judge to designate another municipal judge from any municipality in the state, regardless of the designating judge's judicial administrative district (the designation continues to be subject to the approval of the chief judge). In addition, the substitute amendment allows the designation of a temporary reserve judge, as an alternative to a sitting judge. The temporary reserve judge need not reside in the judicial administrative district in which the municipal court is located.

APPOINTMENT WHEN PERMANENT VACANCY IN OFFICE OF MUNICIPAL JUDGE

Current Law

Under current law, if there is a permanent vacancy in the office of municipal judge, the chief judge of the judicial administrative district may, upon request of the municipal governing body,

designate another municipal judge to perform the duties of the office until the office is filled by temporary appointment of the governing body under s. 8.50 (4) (fm), Stats. [s. 800.06 (3), Stats.] The chief judge of the first judicial administrative district may designate a municipal judge from any municipality within the state; the chief judge of a judicial administrative district other than the first district is limited to designating a municipal judge from a municipality within the same judicial administrative district as the chief judge.

The Substitute Amendment

The substitute amendment allows the designation of a temporary reserve judge, as an alternative to a sitting municipal judge, until the permanent vacancy is filled by temporary appointment by the governing body. In addition, the substitute amendment allows the chief judge of a judicial administrative district to appoint a temporary reserve judge or municipal judge from any municipality within the state.

APPOINTMENT OF TEMPORARY RESERVE JUDGES IN MUNICIPAL COURT

Current Law

Under current law, the chief judge of a judicial administrative district may appoint a temporary reserve judge to perform duties on a day-by-day basis as directed by the chief judge. [s. 800.056, Stats.]

The Substitute Amendment

The substitute amendment expressly provides that a temporary reserve judge may be appointed by the chief judge of a judicial administrative district regardless of where the temporary reserve judge resides at the time of appointment.

APPOINTMENT IN CASES OF MUNICIPAL JUDGE INCOMPETENCE, INABILITY OR FAILURE TO ACT; DISQUALIFICATION; OR SUBSTITUTION

Current Law

Under current law, if a municipal judge is incompetent, unable or fails to act, recuses himself or herself, or is subject to a substitution order, the Chief Justice of the Supreme Court assigns another municipal judge, temporary reserve judge, or circuit judge, depending on the reason for the assignment, or transfers the case to circuit court. [See, generally, ss. 751.03 (2); and 800.06 (2), Stats.]

The Substitute Amendment

The substitute amendment does not affect the assignment of another municipal judge or temporary reserve judge in these circumstances.

ASSIGNMENT OF OTHER JUDGES UNDER SUBSTITUTE AMENDMENT SUBJECT TO LOCAL QUALIFICATIONS

The substitute amendment also requires that a municipal judge or temporary reserve judge assigned under its provisions meet any local qualifications for a municipal judge, such as a requirement that a municipal judge be a lawyer, established by the municipality or municipalities that established the municipal court.

DIFFERENCES BETWEEN SUBSTITUTE AMENDMENT AND ORIGINAL PROPOSAL

The substitute amendment revises the original bill by:

1. Expressly applying to assignment of municipal judges or temporary reserve judges in cases where a municipal judge is temporarily absent or is sick or disabled and where there is a permanent vacancy in the office of municipal judge. (As drafted, the original bill only applied to appointment of temporary reserve judges by the district chief judge to perform duties on a day-by-day basis as directed by the chief judge and, arguably, did not apply to the situations expressly covered by the substitute amendment.)
2. Specifying that either a municipal judge or a temporary reserve judge may be appointed in cases of temporary absence, sickness or disability, or vacancy.
3. Requiring that a municipal judge or temporary reserve judge appointed under the provisions of the substitute amendment meet any local eligibility qualifications.

Assembly Substitute Amendment 1 was recommended for adoption by the Assembly Committee on Judiciary by a vote of Ayes, 8; Noes, 0.

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